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Supreme Court of the United States

OCTOBER TERM, 1936

NUMBER 214

JUAN BENGZON,
Petitioner,

v.

THE SECRETARY OF JUSTICE AND THE INSULAR AUDITOR OF THE PHILIPPINE ISLANDS,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES

BRIEF FOR RESPONDENTS

EUGENE M. CAFFEY,
Counsel for Respondents.

ARTHUR W. BROWN,
The Judge Advocate General, U. S. Army,

LOWELL W. BASSETT,
Judge Advocate,
Of Counsel.

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BRIEF FOR RESPONDENTS

Introduction

The petitioner seeks a reversal of a decision of the Supreme Court of the Commonwealth of the Philippines denying his claim to a gratuity under the provisions of Act 4051, Laws of the Philippines.

Opinions Below

The opinions of the lower courts have not yet been officially reported. The opinion of the Court of First

Instance of Manila is to be found on pages 29 to 35 of the Record herein. The majority opinion of the Supreme Court of the Philippines appears on pages 36 to 43 of the Record and the minority opinion on pages 43 to 50 thereof.

The Question Presented

The decision of this case hinges on the answer to one question:

Was section 7 of Act 4051, Laws of the Philippines, a "particular item * * * of an appropriation bill" within the meaning of section 19 of the Philippine Autonomy Act and hence subject to the power of the Governor General to veto particular items in appropriation bills?

This is substantially the question suggested under "The Issues of Law" on page 7 of the petition.

The Statutes Involved

The statutes involved in this case appear in the appendix, pages 26 to 32.

Statement of the Case

On January 14, 1933, the petitioner, a justice of the peace in the Philippine Islands, attained the age of sixty-five years. He thereupon and on account of his age automatically ceased to hold office in accordance with Act 3899, Laws of the Philippines.

In February, 1933, the Philippine Legislature enacted a measure which became Act 4051, Laws of the Philippines. This act provided for the payment of gratuities to two classes of persons (defined in sections 1 and 7) and appropriated the necessary funds

for such payments (section 10). Under section 1, persons forced from the public service on or before December 31, 1933, by reorganization of the government, were made eligible to receive the gratuities prescribed by the act. Under section 7, provision was made for the payment of gratuities to justices of the peace, who, like the petitioner, were separated from their offices during 1933 by reason of age. On February 21, 1933, the Governor General approved the act with the exception of section 7, which he expressly disapproved (R-32).

The petitioner believed that the Governor General's veto of section 7 was ineffective and that section 7 had become law in spite of the purported veto. Accordingly, he applied for the gratuity provided by the act. Payment of the gratuity was refused. The petitioner thereupon applied to the Court of First Instance of Manila for a writ of mandamus addressed to the respondents and directing them to order the payment to him of the gratuity in question (R-1-3).

The Court of First Instance dismissed the petitioner's action on the ground that since the Governor General was not a party to the proceedings, the Court could not inquire into the alleged invalidity of his veto of section 7 (R-45). Upon appeal to the Supreme Court of the Philippines, that tribunal affirmed the judgment of the lower court (R-43), basing its decision on a finding that Act No. 4051 was an appropriation bill, that section 7 was an item in an appropriation bill (R-39) and that hence the veto of section 7 by the Governor General was a valid exercise of the power conferred upon him by the perti-

nent part of section 19 of the Philippine Organic Act (August 29, 1916; 39 Stat. 551), which provides:

> "The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object."

Summary of the Argument

The respondents contend:

That section 7, Act 4051, Laws of the Philippines, was a "particular item * * * in an appropriation bill" within the contemplation of section 19 of the Philippine Autonomy Act. From this it follows that the Governor General's veto of section 7 was effective to prevent its becoming law and that the petitioner is therefore not entitled to the gratuity claimed by him.

ARGUMENT

As the expressions "appropriation bill" and "particular item or items" (in an appropriation bill) appear never to have been the subject of definition by the Federal courts or by the Congress, it is a logical assumption that the expressions are not technical but are to be given the ordinary meaning of the words used. On this basis and referring to Webster's "New International Dictionary of the English Language" (Merriam, 1918), it is found that an appropriation is "money set apart by formal action to a particular use" and an item is "a detail; as the items in a bill". Applying these definitions, a legislative act (whatever its stated purpose and detailed provisions may be) which sets aside money for a specific use may fairly be called an appropriation act because one re-

sult of the measure is to make an appropriation. If, in addition to making an appropriation, the bill directs that the money be expended in certain amounts for a number of stated purposes, then such directions may logically be said to form individual details or items of the bill.

Act 4051, Laws of the Philippines, seems to fall squarely within the tests just suggested. Section 10 of the act makes an appropriation from the Insular treasury of the funds necessary to pay the gratuities prescribed by the act to the classes of persons defined in sections 1 and 7. The amount of money to be paid to certain justices of the peace under section 7 can be calculated by reference to the number of such justices and their length of service. That is, there can be ascertained and taken from the act a perfectly definite provision, both as to purpose and amount, for payments to justices of the peace. This being so, it is not straining at language to say that the provision for payments to these justices is a detail or separable part of the legislation and hence a particular item of the measure, which is itself an appropriation act because it appropriates money. Accordingly, the Governor General was empowered under the Philippine Autonomy Act to veto section 7 without affecting the remainder of the bill and his veto was effective to deny to the petitioner any basis for the claim to a gratuity now asserted by him.

In addition to a consideration of the matter at issue on the basis of general principles, a detailed examination was made of the legislative history of the bill which became the Philippine Autonomy Act in an effort to find some more or less authoritative ex-

planation of what power the Congress intended to confer on the Governor General by section 19 and whether the Congress was employing the language used in any unusual or technical sense. However, neither in the hearings on the bill, in the reports on the bill, or in the debates in the two Houses, is any light thrown on section 19. Looking at the Philippine Autonomy Act as a whole, it is seen that a great many restrictions were placed upon the authority of the Philippine Government thereby established and that final decision on all legislation enacted by the new insular legislature was vested in the Governor General and the President (section 19). In other words, the popularly elected local legislature was powerless to act in the face of opposition from the President and the Governor General. It is worth noting that the latter was a Federal and not an Insular official. Since the Congress apparently thus intended to keep the conduct of government in the Islands effectively under the control of officers of the United States and not of the Philippines, it follows that if any question arises, based on possible ambiguity or vagueness in the language of the statute, as to the respective powers of the Insular legislature and the Governor General in the field of legislation then, in order to preserve the control of affairs in the Governor General, it is necessary to adopt a construction, if fairly permissible, which will favor the position of the Governor General.

In the case at bar, the position of the petitioner is that Act 4051 is not an appropriation act because it is entitled "An Act to provide for the payment of retirement gratuities * * *" and does in fact provide for

the payment of gratuities. He admits that the act does appropriate money but avoids the logical conclusion that the act is both a gratuity and an appropriation act by saying (Petition, page 19) that the appropriation feature is merely a collateral incident necessary to carry out the gratuity provisions. He says further (Petition, page 24) that section 7 is not an item of an appropriation bill because it does not, by itself, make any appropriation of money. All of this overlooks the fact that section 10 does appropriate money and that section 7 designates the persons to whom the money is to be paid and that the veto of section 7 operates to remove from the act a perfectly distinct and separable object of expenditure, namely, certain justices of the peace, without in any way disturbing the other provisions of the act.

The petitioner's contentions cannot be sound for the reason that if they are upheld it is tantamount to saying that by carefully naming a bill appropriating money from the Insular treasury anything but an appropriation bill and by placing the objects of expenditure in sections of the bill so that they are separated from the section actually appropriating the money, the Insular legislature can completely strip the Governor General of his powers granted by the Congress to veto particular items of an appropriation bill. That is, if the petitioner prevails, the remedy provided by the Congress to prevent the well known and deplorable practice of presenting to the executive omnibus bills containing highly objectionable appropriations along with meritorious appropriations will be entirely destroyed.

The action of the Governor General on section 7, Act 4051, was in keeping with the view of the author-

ity conferred by section 19 of the Philippine Autonomy Act which has been held by several governors general since the approval of the latter act on August 29, 1916. Examples of the exercise of this power are collected in the Appendix (pages 33 to 38). These examples are taken from the annual general appropriation acts for the support of the Philippine Government and indicate the all inclusive meaning assigned to the word "item" by the chief executives of the Philippines. In none of these examples (nor in hundreds of others that might be shown) was the veto overridden by the legislature nor the Governor General's action otherwise questioned. This is at least some indication that the view of his power of partial veto held by the Governor General was understood by the legislature as correct in law. The wide meaning given to "item" by the governors general and the legislature amounts to an administrative interpretation of section 19 by those charged with its execution. It is permissible under the wording of the statute and will not lightly be disturbed by this Court.

United States v. *Vowell*, 5 Cranch (U. S.) 368 (1809).

Smyth v. *Fiske*, 23 Wall. (U. S.) 374 (1874).

United States v. *Moore*, 95 U. S. 760 (1877).

Hastings and D. R. Co. v. *Whitney*, 132 U. S. 357 (1889).

United States v. *Hammers*, 221 U. S. 220 (1910).

Brewster v. *Gage*, 280 U. S. 327 (1929).

Alaska S. S. Co. v. *United States*, 290 U. S. 256 (1933).

As the Congress has never shown any intention to give the Governor General of the Philippines less power than the executive heads of the other outlying possessions but rather more, it is of interest, as tending to support the Philippine interpretation of section 19, to compare the powers of partial veto conferred on the Governors of Hawaii, Alaska, and Puerto Rico, bearing in mind the suggestion that the Congress intended that the Governor General should have similar and at least as much authority as the three governors.

Hawaii:

He (the Governor) may veto any specific item or items in any bill which appropriates money for specific purposes, but shall veto other bills, if at all, only as a whole. (April 30, 1900, sec. 49, 31 Stat. 149).

Alaska:

* * * He (the Governor) may veto any specific item or items in any bill which appropriates money for specific purposes, but shall veto other bills, if at all, only as a whole. * * * (August 24, 1912, sec. 14, 37 Stat. 516).

Puerto Rico:

* * * If any bill presented to the governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving of the other portion of the bill. * * * (March 2, 1917, sec. 34, 39 Stat. 960).

These quotations show that the three governors have the power of partial veto over any bill appropriating money. There being absolutely nothing to show that any difference in meaning was intended between "an appropriation bill" (Philippines) "any bill which appropriates money". (Hawaii and Alaska) and "any bill * * * (which) contains * * * items of appropriation" (Puerto Rico) and the three expressions being synonymous in practical effect, it follows that the Governor General of the Philippines was intended by the Congress to have the power of partial veto over any bill appropriating money, at least in the form of items, as does Act 4051. As has already been pointed out, an "item" is simply a detail or a severable part of a bill and there is nothing in the Philippine Autonomy Act, as there is in the Puerto Rican act quoted, requiring that an item in itself appropriate money.

Based on the foregoing it is proper to assert

(a) That Act 4051 was an "appropriation bill" as the words were used by the Congress in the Philippine Autonomy Act;

(b) That section 7 of Act 4051 was an "item" in such bill because

(1) It provided for the payment of money to a defined class of persons in an amount readily calculable out of the funds provided in section 10 of the Act and because

(2) Apart from its appropriative effect, it was a separate section, part, or detail of the bill.

(c) That being such item in such bill it was subject to separate veto by the Governor General and his

veto was therefore effective to prevent section 7 from becoming law;

(d) That accordingly the petitioner has no basis in law for his claim to a gratuity from the Philippine government.

In seeking for precedents touching the questions at issue, it was found that apparently there have been no cases dealing with them in any Federal jurisdiction. A considerable number of state constitutions contain provisions for the separate veto of items in bills appropriating money but the number of cases involving such provisions is very small. Those known to the respondents, which includes all of those cited by the petitioner, are analyzed below. From the analyses it will be noted that of the cases cited by the petitioner those which are not irrelevant support the position of the respondents. While these cases are from the state courts they are persuasive as showing the way special veto provisions similar to that in the Philippine Autonomy Act have been viewed by courts in Oklahoma, Arizona, Mississippi, Illinois, Texas and Pennsylvania. While as stated before, no material of any kind has been found to show expressly what the Congress meant by the special veto power in section 19 of the Philippine Autonomy Act, it is a fair assumption that the members drafting the act were more or less familiar with similar powers in the state constitutions and intended to give the Governor General substantially the power of special veto exercised by the governors of the states and already conferred by the Congress on the governors of Hawaii and Alaska and later given to the governor of Puerto Rico. On this assumption the state cases are ex-

tremely helpful in showing the permissible extent of the power as exercised in the states.

Black and White Taxicab Co. v. *Standard Oil Co.*, 25 Ariz. 381, 218 Pac. 139 (1923).

A bill for raising money for highway purposes passed by the Arizona legislature provided, among other things, that a tax of 3 cents per gallon should be added to the sales price of the gasoline by the dealers. It was also provided that the tax should be paid to the State Treasurer, who was directed to place one-half of it in the funds of the state in the treasury and to turn one-half of it over to the counties of the state for the maintenance of county roads and highways. The governor of Arizona, in approving the bill as a whole, vetoed the gasoline tax provision and the apportionment of the funds derived therefrom under authority of section 7, Article V of the State Constitution:

> "If any bill presented to the Governor contains several * * * appropriations of money, he may object to one or more of such items while approving other portions of the bill."

In spite of the Governor's partial veto, the state taxing officials proceeded with the collection of the tax. The Taxicab Company paid 70 cents under protest and brought suit to recover the payment on the ground that the taxing and apportionment provisions had been vetoed and were not law.

The Supreme Court of Arizona was of the opinion (a) that the taxing section was not an appropriation of money and hence was not subject to separate veto

by the Governor and (b) that the constitutional provision, in referring to "appropriation of money", meant money belonging to the State and did not cover money collected by the State for the counties, as was one-half of the gasoline tax, which never was intended to and never did become part of the funds of the State but was the absolute property of the counties and hence that the provision appropriating one-half of the tax was not an appropriation of money within the meaning of the State constitution. Accordingly, the Court held the separate veto by the Governor of the taxing and apportionment sections of the bill to be void.

It will be observed that this case deals with the broad question of what was an "appropriation" under the Arizona constitution and not with the meaning of the expressions "appropriation bill" and "items in appropriation bill" as used in the Philippine Autonomy Act. Its relevancy to the questions at bar is not apparent.

Callaghan v. *Boyce,* 17 Ariz. 433, 153 Pac. 773 (1915).

Boyce brought suit against Callaghan as auditor of Arizona to compel him to issue his warrant in settlement of twenty claims lettered from "a" to "t". Settlement of claims "a", "b", "c", "f", "i", and "j" had been refused because the Auditor was uncertain as to the availability of funds to pay them on account of the Governor's separate veto of parts of the General Appropriation Bill for 1915 (c. 3, Session Laws of the First Special Session of the Second Legislature of the State of Arizona). The Court grouped claims

"a", "b", "c", "f", and "j" in a class of claims affected by the Bill because the Governor's veto extended to an entire subdivision or section of the General Appropriation Bill. Claims "i" and "j" were affected because of the Governor's veto of a part only of an entire subdivision or section of the Bill. The parts of the Bill vetoed by the Governor are set out below, with a reference to the claims affected and the ruling of the Court on the validity of the veto.

Section 1. * * *

8. To pay the salaries of the chief clerk and assistant clerk in the incorporating department of the corporation commission there is hereby appropriated the sum of four thousand five hundred sixty dollars ($4560.00); two thousand two hundred eighty dollars ($2280.00), or so much thereof as may be needed, to be paid during each of the years ending June 30, 1916, and June 30, 1917; and all statutory appropriations heretofore made for the expenses and purposes provided for in this subdivision are hereby repealed, and the state auditor is hereby directed to draw no warrant against the general or other fund for any state moneys for the purposes provided for in this subdivision otherwise than is herein directed, the appropriation herein made being in lieu of all such statutory appropriations and is not in addition thereto. (Claim "a". Vetoed in its entirety by the Governor. Veto upheld by the Court, 153 Pac. 783.)

27. To pay all other persons employed by the state tax commission there is hereby appropriated the sum of three thousand dollars ($3,000.00); fifteen hundred dollars ($1,500.00), or so much thereof as may be needed, to be paid during each of the years ending June 30, 1916,

and June 30, 1917. (Claim "b". Vetoed in its entirety by the Governor. Veto upheld by the Court, 153 Pac. 783.)

32. All moneys received from the sale of hunting licenses, permits, certificates, fines, penalties, forfeitures, or other sources, shall constitute the game protection fund, and shall be used to pay the salaries of all deputy state game wardens, for printing, the publishing of reports, postage, express, and all other necessary and office expenses of the state game warden. This appropriation shall be in lieu of all appropriations provided for in title XVIII, revised statutes of Arizona, 1913, penal code. (Claim "c". Vetoed in its entirety by the Governor. Veto upheld by the Court, 153 Pac. 783.)

93. For the maintenance of the national guard of Arizona, for the payment of insurance, expenses of instruction, examination of recruits, purchase of clothing, payment of salaries, providing allowance for camps of instructions, and other expenses, there is hereby appropriated the sum of sixty thousand dollars ($60,000.00); thirty thousand dollars ($30,000.00), or so much thereof as may be needed, to be paid during each of the years ending June 30, 1916, and June 30, 1917, said sum to be placed to the credit of the military fund out of the taxes collected for the years 1915 and 1916; said sum to be expended as provided by law; and all vouchers for expenditures made under the provisions of this section, shall be signed by the adjutant general. Upon presentation of such vouchers the state auditor is hereby authorized and directed to draw his warrants payable out of the funds credited to the account of the military fund and the state treasurer is authorized and directed to pay such warrants; provided, that the salary and

allowance for the adjutant general as provided by law shall not exceed the sum of twenty-four hundred dollars ($2400.00) per year, payable semi-monthly, and on travel allowances outside of the state shall be allowed. All statutory provisions for the salary of the adjutant general are hereby repealed.

The above appropriations are in lieu of all appropriations now provided in title XXXIII of the revised statutes of Arizona, 1913, civil code. (Claim "j". Vetoed in its entirety by the Governor. Veto upheld by the Court, 153 Pac. 783.)

Section 51. No expenditures shall be made or indebtedness incurred during the fiscal years ending June 30, 1916, and June 30, 1917, for salaries, maintenance or expense of any department of state, office, commission or board; nor for maintenance, equipment, repairs, new construction, or expense of any state institution, otherwise than is herein provided for or in excess of the amounts herein appropriated for the purposes provided for in this general appropriation bill; provided, that nothing herein shall be construed as limiting, repealing, or affecting any special appropriation made by the second legislature during its regular session.

Paragraph 2815, chapter XVIII, title 11, revised statutes of Arizona, 1913, civil code, be and the same is hereby repealed.

Paragraph 4577, chapter I, title 43, revised statutes of Arizona, 1913, civil code, be and the same is hereby repealed.

Paragraph 4833, chapter I, title 49, revised statutes of Arizona, 1913, civil code, be and the same is hereby repealed. (Claims "b" and "j". Vetoed in its entirety by the Governor. Veto upheld by the Court, 153 Pac. 783.)

Section 1. * * *

57. To pay the salary of the citizen member of the board of control there is hereby appropriated the sum of forty-eight hundred dollars ($4800.00); twenty-four hundred dollars ($2400.00) to be paid during each of the years ending June 30, 1916, and June 30, 1917. *Paragraph 4460, revised statutes of Arizona, 1913, civil code, is hereby repealed and all statutory appropriations for the salary provided for in this subdivision are hereby repealed, and the state auditor shall draw no warrant against the general or other state fund for the salary provided for in this subdivision otherwise than is herein directed, the appropriation herein made being in lieu of all such statutory appropriations and is not in addition thereto.* (Claim "f". Portions italicized were vetoed by the Governor. Veto not sustained by the Court on the ground that the Governor had no power to veto *part* of an item.)

87. To pay for elementary training in agricultural, mining, manual training, domestic science, and other vocational pursuits in such normal and high schools as are designated under the provisions of law to give such training, there is hereby appropriated the sum of seventy-three thousand dollars ($73,000.00); thirty-six thousand five hundred dollars ($36,500.00), or so much thereof as may be needed, to be expended during each of the years ending June 30, 1916, and June 30, 1917. *The appropriation herein made for such elementary training is in lieu of all statutory appropriations heretofore made for this purpose, and is not in addition thereto; and the state auditor is hereby directed to draw no warrant against the general or other state fund for the expenses of such elementary training*

provided for in this subdivision otherwise than is hereby directed. (Claim "i". Portions italicized were vetoed by the Governor. Veto not sustained by the Court on the ground that the Governor had no power to veto *part* of an item.)

The petitioner apparently cites this case in order to illustrate what an "item" is (Petition, p. 22, 23, 25). From the illustrations above quoted, it appears that "item", to employ the words of the Court,

> "* * * is used synonymously with 'subject', 'distinct or separate parts,' and an objection and disapproval by the Governor of one item or several items of appropriations of money has reference to the distinct subject or part for which the appropriation is made and all its incidents. In *Commonwealth* v. *Barnett,* 199 Pa. 161, 48 Atl. 976, 55 L.R.A. 882, the term 'item' as used in article 4, sec. 16, Constitution of Pennsylvania, a similar provision, was held to mean 'the particulars, the details, the distinct and severable parts of the appropriation,' and is 'used interchangeably in the same sense' with the word 'part.'" (163 Pac. 782.)

It will be noted, from the illustrations set out above, that the Supreme Court of Arizona gave the word "item" a very wide meaning, and did not confine it to the parts of a bill in themselves appropriating money. This has been the practice in the Philippines since the enactment of the Philippine Autonomy Act (See Appendix, pages 36 to 38).

Fairfield v. *Porter,* 25 Ariz. 146, 214 Pac. 319 (1923).

Chapter 42, Session Laws of the Fifth Legislature of Arizona, Special Session of 1922, was a general appropriation bill containing this language:

> Section 1 * * *
>
> 5. For the Corporation Commission: For salaries and wages * * * $53,880. For the following positions not to exceed the annual rates herein specified:
>
> * * * *
>
> 1 rate clerk * * * $2,100.00 per annum.
>
> * * * *

The Governor vetoed the foregoing provision for the rate clerk. Suit was instituted to force a payment from this appropriation on the ground that the Governor's veto was ineffective because the rate clerk provision was not an "item" but only part of an "item", the "item" being the whole of subdivision 5, or in other words, all the money set apart for the Corporation Commission. The Supreme Court of Arizona, in sustaining the veto of the Governor said:

> Lockwood, Superior Judge: * * * But certainly whenever the Legislature goes to the extent of saying in any bill appropriating money that a specified sum of money raised by taxation shall be spent for a specified purpose, and that alone, while other sums mentioned in the bill are to be used otherwise, no matter what language it may be disguised under, it is, nevertheless, within both the spirit and letter of the Constitution, an "item" within the bill and may be disapproved by the Governor * * *. (214 Pac. 323.)

This language supports exactly the position of the respondents in the case at bar.

Commonwealth v. *Barnett,* 199 Pa. 161, 48 Atl. 976 (1901).

Section 8 of the general appropriation act of the State of Pennsylvania approved May 13, 1899, appropriated for the public schools for the years 1899 and 1900, the sum of $11,000,000, and provided that "out of the amount received by the city of Philadelphia there shall be paid the sum of three thousand dollars to the Teachers' Institute of said city; the sum of three thousand dollars to the Philadelphia Schools of Design for Women for their corporate purposes, and the sum of ten thousand dollars to the Teachers' Annuity and Aid Association of said city * * *." In approving the bill as a whole, the Governor vetoed that part of Section 8 directing that parts of the sum appropriated for the schools should be paid to the Teachers' Institute, the School of Design, and the Aid and Annuity Association.

In an attack on the validity of the Governor's special veto suit was brought against the state treasurer to force him to pay over the money contained in the vetoed parts of the bill on the ground that they were not items within the meaning of section 16, article IV, of the Pennsylvania constitution, which grants the Governor the "power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items * * *."

In upholding the Governor's veto the Court said, through Mitchell, J.:

> The argument on both sides has included much discussion of the exact definition of the word 'item'. But we have no occasion to con-

> sider minutely the language of the dictionaries in this connection. The general idea conveyed by the word is well understood and with that in our minds the precise meaning in the constitution is shown by the context to be the particulars, the details, the distinct and parts, of the appropriation * * *.

Here again both the facts and the language of the decision support the respondents' contention as to what constitutes an "item" in a bill.

Fulmore v. *Lane,* 104 Tex. 499, 140 S.W. 405 (1911).

In section 1 of the general appropriation act of the State of Texas for the biennium 1911-1913, there was appropriated the sum of $83,160 for the Attorney General's Department, half of the money to be used the first year but remaining available until exhausted, and half the second year. Appended to this appropriation was a set of rules for the guidance of the Attorney General in the spending of the funds, including maximum limitations in the number of his employees and their salaries. The Governor, exercising his constitutional power of disapproving items of appropriation in bills containing such items, vetoed that part of the appropriation setting aside $41,580 for the second year of the biennium, stating that the sum appropriated for the first year was sufficient for both years. He also vetoed the rules for the guidance of the Attorney General. In a suit to test the validity of the Governor's special veto the Supreme Court of Texas held that the appropriation for each year of the biennium was an "item" and subject to the Governor's veto but that the set of rules was an inseparable part of an item and that the Gov-

ernor had no authority to veto a part of a bill not severable and distinct from the remainder. (140 S.W. 412).

In this case the Court had no difficulty in deciding that a distinct and severable part of a bill was an "item" in itself and subject to special veto although surrounded by and included in another and larger "item". The case is of value as showing the pragmatic definition of "item" applied by the courts.

Menefee v. *Askew,* 25 Okla. 623, 107 Pac. 159 (1910).

This case does not involve the meaning of "appropriation bill" or of "item" but is concerned solely with whether certain parts of Chapter 19, Session Laws of Oklahoma, 1909, constituted such an "appropriation" of state funds within the meaning of the Oklahoma constitution as to justify payment of the compensation of the Fish and Game Warden.

People v. *Brady,* 277 Ill. 124, 115 N.E. 204 (1917),

A law of Illinois provided an appropriation as follows:

(A) To the State Board of Agriculture the sum of one hundred fifty-three thousand, one hundred and fifty dollars ($153,150) for the two years beginning July 1, 1915, and ending June 30, 1917, to be used as follows (then follows a list specifying 44 separate purposes with an amount set opposite each purpose). The Governor applied his special veto to several of these purposes and their corresponding amounts under his constitutional power to "not approve any one or more of the items or sections contained in any bill" appropriating money. It was contended, in a

suit testing the validity of the special veto, that the only item the Governor could veto was the provision of $153,150 for the general purposes of the Board as this was the distinct item within the meaning of the constitution, the 44 separate purposes and amounts being merely apportionments or directions. In upholding the veto the Court said:

> "The word 'item' is in common use and well understood as a separate entry in an account or a schedule, or a *separate particular in an enumeration of a total which is separate and distinct from the other particulars or entries* * * *." (115 N.E. 207) (emphasis supplied).

State v. *Holder*, 76 Miss. 158, 23 So. 643 (1898).

The legislature appropriated $40,980 for salaries of teachers and officers at the State Industrial Institute and College but provided that the money should not be available unless the trustees of the institution adopted by-laws covering some half dozen different matters and filed with the auditor a copy of their action showing compliance with the conditions imposed by the legislation. The Governor had constitutional authority to "veto parts of any appropriation bill" while approving the remainder. He vetoed several of the proposed by-laws. A suit was brought to test the validity of the Governor's special veto. The Supreme Court of Mississippi held that the Governor had exceeded his authority because the veto was directed not to parts of the bill different, separable, and each complete without the other as contemplated by the constitution, but to conditions attached to such a part.

The Court stated that an unauthorized qualified approval of a bill did not amount to the approval necessary to make such bill law.

It is to be observed that the idea of "part" entertained by the Court is exactly the definition of "item" contended for by the respondents in the case at bar.

University v. *Trapp*, 28 Okla. 83, 113 Pac. 910 (1911).

The legislature appropriated about $285,000 for the support of the University in section 1 of a bill. In section 2 of the bill it apportioned the money, so much to be spent on each item in a long list of specified objects and purposes. The Governor vetoed one of these "items" and reduced the amounts apportioned for sixteen of the others. His action was challenged by the University. It was held by the Supreme Court of Oklahoma that he had exceeded his authority; that the only item subject to his veto was the total appropriation in section 1; that section 2 was made up not of "items" but of directions or conditions as to the expenditure of the funds. It was further held that since the Governor had not unqualifiedly approved or disapproved the bill, which was his only authority, his action was a nullity and the bill, since it had not been properly approved, had not become law.

As to the first holding, it is unsound from the standpoint of principle and the weight of authority. It was condemned on both counts by the Supreme Court of Illinois in *People* v. *Brady, supra*, and has never been followed outside of its own jurisdiction.

CONCLUSION

From the foregoing it is believed to be evident that the Governor General was acting within his authority in vetoing Section 7, Act 4051, Laws of the Philippines; that accordingly Section 7 never became law; that as a consequence the petitioners' claim for a gratuity is without foundation; and that therefore the judgement of the Supreme Court of the Commonwealth of the Philippines should be affirmed.

Respectfully submitted,

EUGENE M. CAFFEY,
Counsel for Respondents.

ARTHUR W. BROWN,
The Judge Advocate General, U. S. Army.

LOWELL W. BASSETT,
Judge Advocate,
Of Counsel.

APPENDIX

Statutes Involved

Philippine Autonomy Act (August 29, 1916; 39 Stat. 551):

> "SECTION 19. . . . The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he shall not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the legislature without his approval."

ACT 4051, LAWS OF THE PHILIPPINES

AN ACT TO PROVIDE FOR THE PAYMENT OF RETIREMENT GRATUITIES TO OFFICERS AND EMPLOYEES OF THE INSULAR GOVERNMENT RETIRED FROM THE SERVICE AS A RESULT OF THE REORGANIZATION OR REDUCTION OF PERSONNEL THEREOF, INCLUDING THE JUSTICES OF THE PEACE WHO MUST RELINQUISH OFFICE IN ACCORDANCE WITH THE PROVISIONS OF ACT NUMBERED THIRTY-EIGHT HUNDRED AND NINETY-NINE, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. Whenever it is necessary, in carrying out of the provisions of Act Numbered Four thousand and seven or any other provisions of law, department order, or regulation adopted for the purpose of consolidating activities or reducing the personnel and expenses of the Government, to abolish a position or retire an officer or employee in any bureau or office of the Insular Government on or before December thirty-first, nineteen hundred and thirty-three, the officer or employee to be separated or retired from the service shall be entitled to a gratuity as follows:

(a) Regularly appointed officers and employees shall be entitled to gratuity at the rate of one month's salary or its equivalent in the case of those paid by the day or by the week for each year of service and the proportionate amount of any fraction thereof, but not to exceed twenty-four months in the case of those whose compensation exceeds twelve hundred pesos a year: PROVIDED, That in the case of those who receive twelve hundred pesos a year or less the total retirement gratuity to which they may be entitled shall not exceed twenty-four hundred pesos.

(b) Temporary officers and employees who have served the Government for at least five years before the approval of this Act, shall be entitled to gratuity at the rate of one month's salary or its equivalent in the case of those paid by the hour, by the day or by the week for each year of service and the proportionate amount of any fraction thereof, but not to exceed twenty-four months in the case of those whose compensation exceeds twelve hundred pesos a year, PROVIDED, That in the case of

those who receive twelve hundred pesos a year or less the total retirement gratuity to which they may be entitled shall not exceed twenty-four hundred pesos.

(c) Temporary officers and employees who have served the Government less than five years before the approval of this Act, shall be entitled to a gratuity at the rate of half a month's salary or its equivalent in the case of those paid by the hour, by the day or by the week for each year of service and the proportionate amount of any fraction thereof.

Persons serving on a part time basis shall not be entitled to the gratuities authorized in this Act.

SECTION 2. In separating or retiring employees under the provisions of this Act, Department Heads shall give preference to officers or employees who, on account of their advanced age or of any physical or mental defect, are not fit to render further efficient service in the positions they occupy; PROVIDED, HOWEVER, That the appointees of the Governor-General may be retired by the Department Head concerned with the approval of the Governor-General.

SECTION 3. The gratuity provided in section one hereof shall be based on the highest basic rate of salary received and shall be paid monthly at the rate of thirty-three and one-third per centum of the monthly salary of the officer or employee, with the exception of those who will be entitled to a gratuity of one month's salary or less who shall totally be paid immediately upon separation: PROVIDED, HOWEVER, That with the approval of the Head of

the Department in which such officer or employee was serving upon separation or retirement, the said officer or employee may, subject to such rules and regulations as may be approved by the Secretary of Finance, sell, transfer or cede his right to the gratuity payments, to any investment fund under the control of the Insular Government, or to any bank duly authorized to transact business in the Philippine Islands: PROVIDED, FURTHER, That the gratuity provided for in this Act shall not be attached or levied upon execution.

SECTION 4. If an officer or employee separated or retired under the provisions of this Act is entitled to the benefits of Act Numbered Twenty-five hundred and eighty-nine, as amended, or to the benefits of any law or special pension fund created by authority of the Philippine Legislature, such as the Teacher's Retirement and Disability Fund by virtue of Act Numbered Three Thousand and fifty, as amended, the Pension and Retirement Fund of the Philippine Health Service under Act Numbered Thirty-one hundred and seventy-three, and the Pension and Retirement Fund of the Philippine Constabulary under Act Numbered Sixteen hundred and thirty-eight, he shall have the privilege to choose between the benefits prescribed in said Acts and those herein provided for; but in no case shall the payment of gratuity under more than one Act be authorized. If he chooses the benefits granted by the special pension or retirement Act, he shall be retired under the provisions of said Act if he is entitled to its benefits; in case he prefers the gratuity provided for in this Act, he shall be granted such gratuity, and the

amounts deducted from his salary as contributions to the Teacher Retirement and Disability Fund, the Pension and Retirement Fund of the Philippine Health Service, or the Pension and Retirement Fund of the Philippine Constabulary, as the case may be, shall be refunded to him, and in the case of the Teacher's Retirement and Disability Fund, said fund shall also return to the general funds of the Insular Government the corresponding direct contributions made to said special fund by the Insular Government: PROVIDED, HOWEVER, That Judges and Auxiliary Judges of First Instances and Public Service Commissioners who may be retired under the provisions of this Act, shall be entitled to the benefits provided for in Act Numbered Twenty-five hundred and eighty-nine, as amended, the provisions of this Act or any other Act to the contrary notwithstanding.

SECTION 5. In case of the death of an officer or employee after separation or retirement from the service under the provisions of this Act, any gratuity or part thereof due to him shall be paid to his legitimate heir or heirs, or, if discounted under the provisions of section three hereof, then to the investment fund of the Insular Government or to the bank to which the right to such gratuity may have been ceded.

SECTION 6. A person separated or retired under the provisions of this Act may be reappointed to any position in the Insular Government but by accepting such reappointment he shall forever waive all future gratuity payments and or claims under the provisions of this Act. Similarly, a retired person who, under the revisions of section three hereof, has discounted the gratuity payments to which he is entitled shall,

upon his reappointment to any position in the Insular Government, first refund to the investment fund or the bank to which he has ceded his right to the gratuity the total discounted value of all the gratuity payments which he would not yet have received had these been made to him in monthly instalments.

SECTION 7. The Justices of the Peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act.

SECTION 8. The offices or positions vacated by the separation or retirement of officers and employees with gratuities paid under the provisions of section one of this Act shall not be filled and shall be considered abolished ipso facto, except those specifically created by law, and those of chief clerk, chief of division, and lighthouse keeper.

SECTION 9. Nothing herein provided shall be construed as entitling to the benefits of this Act those officers and employees of the Insular Government who voluntarily resign from the service due to the reduction of their compensation or to transfer from one office to another by virtue of the provisions of any Act, or to the abolition of double compensations to which they were formerly entitled, or to any cause not provided herein.

SECTION 10. The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated.

SECTION 11. This Act shall take effect as of January first, nineteen hundred and thirty-three: PROVIDED, That the provisions hereof shall be applicable to such officers and employees of the Insular Government as were separated from the service during the year nineteen hundered and thirty-two as a result of the operation of Executive Order No. 369 of the Governor-General and of his Memorandum Order issued on April eight, nineteen hundred and thirty-two.

SECTION 12. If for any reason, any section or provision of this Act is disapproved by the Governor-General or is challenged in a competent court and is held to be unconstitutional or invalid, none of the other sections or provisions hereof shall be affected thereby and such other section and provisions shall continue to govern as if the sections or provision so disapproved or held invalid had never been incorporated in this Act.

Approved, section 7 excepted, February 21, 1933.

Examples of items in acts of the Philippine Legislature vetoed by the Governor General.

Act 3145 (1924)

Section 1 * * *

"(c) For aid for the completion and repair of high schools in the regular provinces $125,000.00

"(d) For aid for the construction of high schools in the special provinces of Palawan and Batanes $25,000.00

* * * *

"(y) For the construction, maintenance, and operation of radio, cable, and telegraph lines, and for the purchase and installation of apparatus and machinery, including wiring: *Provided*, That part of this sum, not to exceed $30,000, shall be set aside for the construction and operation of a radio station in the Island of Lubang, Province of Mindoro ..... $150,000.00"

Act 3213 (1924)

Section 1 * * *

"(f) For the completion of Surigao High School $20,000.00

"(g) For aid to municipalities for the construction, completion or repair of the following school buildings:

"Abra

* * * (3) For aid in the construction of Mudit, Dolores, Elementary School ..... $750.00 * * *

"Albay

* * * (2) For the reconstruction or improvement of Guinobatan Agricultural School * * * $12,000.00

"(3) For the completion of Balogo School, Oas $1,000.00

* * * *

"(x) For the maintenance and improvement, including dredging works, as well as for the construction of piers at the following ports in the regularly organized provinces:

"* * * 11. For the construction of Calapan seashore protection, Province of Mindoro $20,000.00

"13. For the construction of Valladolid sea wall protection, Province of Occidental Negros $15,000.00

* * * *

"Sec. 4. The funds appropriated by Act Numbered Three thousand one hundred thirteen, section one, paragraph (*h*), and reallotted under the provisions of section three of said Act, under date of February twenty-second, nineteen hundred twenty-four, as follows, are hereby made available and their release is also hereby authorized:

"Improvement and repair of Cabatuan San Miguel Road, Iloilo	P 5,000.00
Improvement and repair of the Santa Barbara-San Miguel Road, Iloilo	5,000.00
Construction of the Ajuy-Barotac Viejo Road via Culasi, Iloilo	13,000.00
Improvement and repairs of the Dumangas-Barotac Nuevo Road, Iloilo	5,000.00
Construction of the Tigbauan-Leon Road via Cordoba, Iloilo	6,000.00
Improvement and repairs of the Cabatuan-Maasin Road, Iloilo	3,000.00

Improvement and repairs of the Maasin-Alimodian Road, Iloilo	3,000.00
Total	47,000.00

"Sec. 5. The fund appropriated by Act Numbered Thirty one hundred thirteen, section one, paragraph (*m*), authorized and allotted under date of April twenty-fourth, one thousand nine hundred twenty-four, under the provisions of section three of the same Act, is hereby made available as follows:

"For the construction of river banks protection at Igbaras, Province of Iloilo	P20,000.00"

Act 3217 (1924)

Section 1 * * *

"A.—SENATE

"120. Supplementary force including personnel of the Legislative Reference Office	28,820.00
* * * *	
"125. Other services, including the quota of the Philippines as members of the Interparliamentary Union, half of which is to be paid by each of the Houses of the Legislature	P28,608.00

"B—HOUSE OF REPRESENTATIVES

"120. Supplementary force including personnel of the Office of Legislative Reference	36,659.00

"129. Other services, including the quota of the Philippines as member of the Interparliamentary Union, half of which is to be paid by each House of the Legislature ..... 19,824.00"

Act 3227 (1925)

Section 1 * * *

"Sec. 3. No vacancy in any position for which funds are appropriated in this Act, occurring after the same has taken effect, shall be filled without the approval of the Secretary of Finance, who shall authorize this only when the appointment is rendered absolutely necessary by the demands of the public service: *Provided, however,* That appointments submitted to the Senate for confirmation and appointments of employees of the Houses of the Legislature shall not be governed by this provision."

Act 3340 (1926)

"Sec. 4. Any appropriation made in this Act for a position or employment shall be available exclusively for the specific position for which it has been made and shall not be used for any other position, although the latter be of the same nature as the former."

Act 3355 (1927)

"Sec. 3. No amount from any of the appropriations for maintenance and repairs and purchases of supplies and materials in any Bureau or Office of the Government shall be used to pay for repairs and maintenance and purchases of supplies and materials made during the year 1927."

Act 3670 (1929)

Section 1 * * *

"Sec. 4. Appropriations for the construction of schools not in excess of three thousand pesos shall be transferred to the municipality concerned and disbursed subject to the approval of the division superintendent of schools, without necessity of the intervention of the Bureau of Public Works."

Act 3912 (1931)

Section 1 * * *

"(i) For the investigation and survey of special road and bridge projects to be designated by the Secretary of Commerce and Communications, including the purchase, operation and maintenance of test boring apparatus, *Provided*, That P5,000 of this amount shall be spent for the investigation and survey of the Capas, Tarlac-Iba, Zambales interprovincial road..... 15,000.00 (Proviso was vetoed.)

"(q) For the construction of insular, provincial, and municipal waterworks, drainage and sewer system projects, whenever the province or municipality concerned shall appropriate funds to cover the cost of one-third of the work prior to the release of the Insular aid authorized by this Act: *Provided*, That no municipality shall be entitled to receive more than P25,000 a year as aid: *Provided, further*, That in the case of a provincial or municipal project benefiting or covering two or more municipalities, each municipality concerned shall be entitled to said P25,000 aid: *And provided finally*, That the sum of P10,000 shall be released for the construction of Bucay Waterworks, Abra, and P18,000 for the construction of the Bantayan Waterworks, Cebu, the above requirements notwithstanding;

the sum of P25,000 shall be set aside for the construction of Malasiqui Waterworks, Pangasinan; the sum of P8,000 for the construction of Santa Maria Waterworks, Laguna; the sum of P12,000 for the extension of the Waterworks system to the College of Agriculture at Los Baños, Laguna; the sum of P20,000 for the construction of Cabugao Waterworks, Ilocos Sur, and P25,000 for the construction of Narvacan Waterworks, Ilocos Sur P350,000.00

Total available for artesian wells and waterworks..... 480,000.00

(Final proviso was vetoed.) * * *

"Sec. 2. Item 5, paragraph (*e*), subsection A, section 1 of Act Numbered Thirty-eight hundred and thirteen for the Province of Oriental Negros, Public Works Act for nineteen hundred thirty-one, is hereby repealed and transferred to item 4, paragraph (*e*), subsection A, section 1, to read as follows: For the Larena Elementary School, Oriental Negros, fourteen thousand pesos (P14,000). * * *

"Sec. 4. The sums appropriated in paragraphs (*a*), (*i*), (*ll*), (*m*), (*n*), (*p*), (*q*), (*s*), (*u*), (*v*), (*w*), and (*x*) shall be distributed in the discretion of the Secretary of Commerce and Communications, but those appropriated in the other paragraphs shall be available for immediate expenditure by the Director of Public Works: *Provided, however,* That in all construction works to be undertaken by the Government that require the use of cement, it shall be compulsory, the provisions of existing laws to the contrary notwithstand, the use of cement manufactured by companies financed by the Government, except in those cases in which for reasons of cost, price and transportation, the use of other cement manufactured in the Philippines as verified by the Insular Auditor is more advantageous."

SUPREME COURT OF THE UNITED STATES.

No. 214.—October Term, 1936.

Juan Bengzon, Petitioner,
vs.
The Secretary of Justice and Insular Auditor of the Philippine Islands.

On Writ of Certiorari to the Supreme Court of the Commonwealth of the Philippines.

[January 4, 1937.]

Mr. Justice Sutherland delivered the opinion of the Court.

This suit was brought by petitioner against respondents in the Court of First Instance of Manila, for a writ of mandamus commanding respondents to approve and order payment of a gratuity awarded to him by section 7 of the Retirement Gratuity Law (Act 4051, Laws of the Philippines), notwithstanding the veto of that section by the Governor-General. The Court of First Instance, upon respondents' demurrer, dismissed the action. Upon appeal, the Supreme Court of the Commonwealth of the Philippines affirmed that decision, holding that the veto by the Governor-General of § 7 was authorized by § 19 of the Organic Act of August 29, 1916, 39 Stat. 545, 551. — Phil. —. Because of the importance of the question, we granted certiorari. 299 U. S. —.

The Retirement Gratuity Law contains twelve sections. It is entitled, "An Act to provide for the payment of retirement gratuities to officers and employees of the Insular Government retired from the service as a result of the reorganization or reduction of personnel thereof, including the justices of the peace who must relinquish office in accordance with the provisions of Act numbered Thirty-eight Hundred and Ninety-nine, and for other purposes."

Section 1 classifies the officers and employees, separated or retired from the service, who shall be entitled to a gratuity, and provides a method for ascertaining the amount. Section 2 accords preferences in the case of certain officers and employees; § 3 fixes the basis for the computation of the gratuity; § 4 allows an officer or employee to choose between the gratuity granted by the act and gratuities conferred by other acts; § 5 provides for succession in respect of unpaid gratuities in case of death; and § 6 authorizes

a conditional reappointment of persons separated or retired under the act.

Section 8—passing for the present § 7—abolishes the offices and positions vacated by the separation or retirement of officers and employees, with certain exceptions. Section 9 excepts from the benefits of the act designated officers and employees. Section 10 provides, "The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated." Section 11 fixes the effective date of the act; and § 12 provides that if any provision of the act be disapproved by the Governor-General or be held unconstitutional or invalid by a competent court, none of the other sections or provisions of the act shall be affected thereby.

The Governor-General returned the act with the endorsement, "Approved, section 7 excepted, February 21, 1933." Section 7, thus vetoed, reads:

"The Justices of the Peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act."

Section 19 of the Organic Act, *supra,* confers upon the Governor-General the usual and general veto power. That is to say, it authorizes him, if he does not approve a bill or joint resolution passed by both houses of the legislature, to "return it with his objections to that house in which it shall have originated"; and it then can become law only if upon reconsideration two-thirds of the members elected to each house shall agree to pass it. This general power requires the veto to include the whole bill. But the section contains an exception, namely—

"The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object."

This exceptional power, it will be seen, is limited to appropriation bills; any other kind of legislation being controlled by the general rule. And its exercise is restricted to the disapproval of a particular item or particular items of such a bill. The precise question for consideration, therefore, is—did the bill which became Act 4051 constitute an appropriation bill; and, if so, was § 7, within the meaning of the foregoing provision of the Organic Act, an item of such bill?

It first is to be observed that the title of the act in no wise suggests that what follows is an appropriation bill; and an examination of the act itself discloses that, with the exception of § 10, the bill itself proposed only general legislation. Eliminating § 10, the remaining eleven sections could stand as a generic act of legislation, leaving the specific matter of appropriation to be dealt with by later enactment. The term "appropriation act" obviously would not include an act of general legislation; and a bill proposing such an act is not converted into an appropriation bill simply because it has had engrafted upon it a section making an appropriation. An appropriation bill is one the primary and specific aim of which is to make appropriations of money from the public treasury. To say otherwise would be to confuse an appropriation bill proposing sundry appropriations of money with a bill proposing sundry provisions of general law and carrying an appropriation as an incident. The Supreme Court of Texas in *Fulmore* v. *Lane,* 104 Tex. 499, 512, clearly pointed out the distinction between the veto power in respect of a bill in the general sense and an appropriation bill. "Nowhere in the Constitution," the court said, "is the authority given the Governor to approve in part and disapprove in part a bill. The only additional authority to disapproving a bill in whole is that given to object to an item or items where a bill contains several items of appropriation. It follows conclusively that where the veto power is attempted to be exercised to object to a paragraph or portion of a bill other than an item or items, or to language qualifying an appropriation or directing the method of its uses, he exceeds the constitutional authority vested in him, and his objection to such paragraph, or portion of a bill, or language qualifying an appropriation, or directing the method of its use, becomes noneffective."

If the Governor-General had power under the foregoing clause of § 19 of the Organic Act to veto § 7 of the gratuities bill, he had like power to veto § 2, granting preferences to certain classes of officers and employees; or § 4, allowing a choice between the gratuity granted by the act under review and a gratuity granted by some other act; or § 5, according a right of succession to unpaid gratuities in case of death; or § 6, providing for conditional reappointment of persons separated or retired under the act; or to veto as many of them as he saw fit. No more than any of the designated sections, does § 7 constitute an item of appropriation.

All of them are distinct parts of an act of general legislation. The elimination of any by an exercise of the veto power, with the going into effect of the remaining portions of the bill as a consequence (if the veto be not overruled by a two-thirds vote of each house), would result in the enactment of a general law in an emasculated form not intended by the legislature and against the will, perhaps, of a majority of each house. This would not be negation of an item or items of appropriation by veto but, in effect, affirmative legislation by executive edict.

So, even if it be conceded that the bill could be characterized as an appropriation bill, § 7 is not an "item" within the meaning of § 19 of the Organic Act. An item of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some general provision of law which happens to be put into an appropriation bill. Provisions granting power to the executive to veto an item or items of an appropriation bill are to be found, in various forms of expression, in many of the state constitutions. Their object is to safeguard the public treasury against the pernicious effect of what is called "log-rolling"—by which, in order to secure the requisite majority to carry necessary and proper items of appropriation, unnecessary or even indefensible items are sometimes included.

Section 73 of the Constitution of Mississippi provides that the Governor may veto parts of any appropriation bill; and although "parts" would seem to be a word of wider application than the words "item or items", the Supreme Court of that state, *State* v. *Holder*, 76 Miss. 158, 180-181, held that it was not designed to enable the Governor to veto legislation carried in an appropriation bill. "Section 73", the court said, "was framed with a view of guarding against the evils of omnibus appropriation bills, securing unrighteous support from diverse interests, and to enable the governor to approve and make law some appropriations, and to put others to the test of securing a two-thirds vote of the legislature as the condition of becoming law. Thus viewed, section 73 is eminently wise, and will prove useful in practice as corrective of an evil, but if a single bill, making one whole of its constituent parts, 'fitly jointed together,' and all necessary in legislative contemplation, may be dissevered by the governor, and certain parts torn from their connection may be approved, and thereby become law, while the other parts, unable to secure a two-thirds vote in both

houses, will not be law, we shall have a condition of things never contemplated, and appalling in its possible consequences."

The court below attached importance to § 12 of the act under review, which provides that if any section or provision of the act *be disapproved by the Governor-General* or held to be unconstitutional or invalid by a competent court, none of the other sections or provisions should be affected thereby. That court viewed the italicized clause of this provision as indicating that the legislature intended the act "to be an appropriation measure with various items", since it anticipated the possibility of a partial veto. Just why this clause was inserted by the legislature does not appear. It may have been merely formal, or inserted out of abundance of caution. Certainly it could not have such force as to convert what plainly was a proffer of general legislation into an appropriation bill. Although the title is only a formal part of an act, and may be resorted to as an aid to the meaning of a statute only in cases of doubt, *Hadden* v. *The Collector,* 5 Wall. 107, 110, the title of the present act, at least, has the effect of overcoming such extrinsic aid as the clause relied upon otherwise might afford to the construction of the act by the court below. If the Philippine Legislature regarded the bill as an appropriation bill, it is strange that the words by which that body described and characterized its own proposed act afford no hint to that effect. Compare *Holy Trinity Church* v. *United States,* 143 U. S. 457, 462-463.

We conclude that the Governor-General was without power to separately veto § 7 of the Retirement Gratuities Act. The judgment of the lower court must be reversed, and the cause remanded for further proceedings not inconsistent with the foregoing opinion.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.